IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6280 of 1992

For Approval and Signature:
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIMLABEN VADILAL SUKHADIYA C/O.HASMUKHBHAI VADILAL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PV HATHI for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6
MS TRUSHA PATEL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR PRANAV G DESAI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 26/12/2007

ORAL JUDGMENT

1. This petition under Articles 226 and 227 of the Constitution of India has been filed against the order dated 2.7.1991 / 30.10.1991. The said

order has been passed by the respondent No.1 in revision application No.11/1991 and thereby the respondent No.1 set aside the order dated 15.2.1990 passed by the respondent No.2.

2. Short facts giving rise to present petition are as follows:-

2.1 The original petitioner – **VADILAL SUKHADIYA** has, since expired and his heirs have been brought on record.

2.2 It was way back in 1966 that the land admeasuring about 18.60 sq mts, which was open waste land in town of Kheralu, was granted on lease to the petitioner for a period of 5 years for constructing cabin to run a “namkeen shop” (hereinafter referred to as “shop”). The said lease was granted on the conditions mentioned in the order dated 8.11.1966 granting the lease including the condition requiring the petitioner to pay rent at the rate of Rs.3/- p.a. for 5 years.

2.3 It is the case of the petitioner that around that time, similar lease in respect of the same waste land were granted in favour of other persons as well.

2.4 The petitioner has further submitted that the said lease was renewed from time to time and regular sanad was issued in the year 1977. By way of the sanad the lease came to be granted / renewed for further period of 5 years i.e. from 20.2.1977 to 19.2.1982.

2.5 The petitioner has further submitted that on or around 30.1.1982, the State Government handed over the said entire piece of waste land to the respondent No.3 – Panchayat (now Municipal borough) and the possession / lease of the land in question continued in favour of the petitioner even after 1982. The petitioner continued to pay the rent and the respondent No.3 continued to accept the same till March – 1990.

2.6 The petitioner has further stated that the petitioner had made an application dated 1.1.1982 requesting the Assistant Collector to allot the land in question to him on permanent basis on payment of such purchase price which may be fixed. The petitioner, however, did not receive any reply in response to the said application of 1.1.1982, however, subsequently an order dated 6.3.1984 came to be passed.

2.7 The petitioner has also stated that in the meanwhile an order dated 6.3.1984 was passed directing, inter alia, that since the Collector had handed over the waste land to the Nagar Panchayat and since prior to such handing over of the waste land to the Panchayat, certain lease were granted in favour of various persons, such lease may be continued as per the practise and applicable regulations. The petitioner has placed on record the said order dated 6.3.1984. The petitioner has also placed heavy reliance on the said document and stated that the said order

was passed by the Revenue Department, State Government. The reason for which the petitioner is placing reliance on the said document is that according to him, the impugned order dated 2.7.1991 / 30.10.1991 is in total disregard to the said order of Revenue Department, State Government.

2.8 The petitioner, in background of such facts, made fresh application in June – 1989 for the same purpose wherein he cited the justification for such fresh application viz. that his adjoining shop holders were granted land on permanent basis. Then, somewhere in November – 1989 certain details were called for by the Office of Collector from the petitioner by communication dated 28.11.1989.

2.9 Subsequently, an order dated 15.2.1990 came to be passed by the Collector whereby the Collector fixed purchase price for the land in question and ordered that on payment of the purchase price the land would be granted to the

petitioner. At this stage, it is pertinent to note that as per the said order dated 15.2.1990, the land in question, which was earlier handed over to Panchayat, was again taken back by the Government and was vested in Government on the ground that the Panchayat had put the said land to commercial use which, according to respondent No.2, amounted to breach of condition. After vesting the said land in the Government, the Collector fixed the purchase price at the rate of Rs.2790/- in respect of the land in question and recorded that the same was granted to the petitioner for running shop on the conditions mentioned in the said order dated 15.2.1990.

2.10 In these facts the petitioner has stated that by the said order dated 15.2.1990, the land in question came to be granted in his favour and in pursuance of the said order he also paid the purchase price of Rs.2790/-.

2.11 Subsequently after lapse of about a year, the respondent No.3 preferred revision

application before the respondent No.1 against the aforesaid order dated 15.2.1990 of the Collector vesting the land in Government and granting the land in question to the petitioner on permanent basis. The respondent No.3 preferred the said application stating, inter alia, that the same was granted without obtaining consent from the Panchayat. It is asserted by the petitioner that the respondent No.3 raised such objection only qua him whereas no such objection in respect of other shop holders was raised by respondent No.3 when similar orders were passed in favour of other shop holders also.

2.12 The aforesaid application of respondent No.3 before the respondent No.1 was registered as application No.11/1991. The petitioner has also stated that while the same was awaiting adjudication, the respondent No.3 passed resolution in general body meeting on 30th April, 1991 resolving unanimously that the revision application preferred by it against the grant of

land by the Collector in favour of the petitioner may be withdrawn. The petitioner has placed a copy of the said resolution at Annexure – F to the petition.

2.13 In pursuance of the said resolution necessary request / submission was made by the respondent No.3 during the hearing of the said revision application on 26.6.1991.

2.14 The petitioner has claimed that it is in backdrop of the said request made by respondent No.3 during hearing on 26.6.1991 that the impugned order dated 2.7.1991 came to be passed. The petitioner has made further grievance against the said order that though the said order is said to have been passed on 2.7.1991, it was dispatched on 30.10.1991 and it bears the said date i.e. 30.10.1991. Since by the said order dated 2.7.1991 / 30.10.1991 the respondent No.1 cancelled the order dated 15.2.1990 passed by respondent No.2, the petitioner felt aggrieved and preferred present

petition.

3. I have heard Mr. Hathi, learned advocate for petitioner, and Ms. Trusha Patel, learned AGP, for respondents.

4. Mr. Hathi, Advocate for petitioner, submitted that the order dated 15.12.1990 passed by respondent No.2 is absolutely just and legal and ought not have been set aside by the respondent No.1. He also submitted that the resolution dated 30.4.1991 passed unanimously by respondent No.3 is just and proper and the request made to the respondent No.1 by respondent No.3 in pursuance of the said resolution ought to have been accepted by the respondent No.1. He stressed that in the said resolution dated 30.4.1991 the respondent No.3 had recorded reasons in support of its decision to withdraw the revision application and in his submissions the said reasons are just and equitable and ought not have been disregarded by respondent No.1. While contending that the order dated

2.7.1991 / 30.10.1991 is arbitrary, irrational and unreasonable, he also emphasized that the request made by respondent No.3 during the hearing on 26.6.1991 ought not have been rejected. He submitted that the order dated 15.2.1990 deserves to be restored and confirmed.

5. Ms. Patel, learned AGP, countered the submission of Mr. Hathi by submitting that after 1982 there was no valid lease in favour of the petitioner and the petitioner was in wrongful and illegal possession of the land in question. She also submitted that the action of Panchayat of granting the land to the petitioner on lease basis and collecting rent from the petitioner was in violation of the conditions on which the entire waste land was handed over to Panchayat by the Collector and that therefore any action by the respondent No.3 in breach of the conditions would consequently invalidate the subsequent actions of the respondent No.3 and on the basis of such illegal actions of respondent No.3, the petitioner cannot base his claim

and/or he cannot justify his demand on the basis of such illegal and unauthorized action of respondent No.3. She, on such ground, supported the order dated 2.7.1991 / 30.10.1991.

6. On 26.6.1991 when the said application was taken up for hearing, what was to be considered by respondent No.1 was the request of respondent No.3 – Panchayat to confirm the order dated 15.2.1990 passed by the Collector and to permit the Panchayat to withdraw the revision application, instead the respondent No.1 entered into the issue of legality and maintainability of order dated 15.2.1990.

7. It is pertinent to note that while passing the said order dated 2.7.1991 / 30.10.1991, the respondent No.1 lost sight of the order dated 6.3.1984 passed by the Revenue Department, State Government. It is relevant that it is the State Government, who passed the said order and issued direction to the effect that the lease granted to the petitioner and other persons be continued

from time to time. Thus, without taking notice of and without considering the effect of said order dated 6.3.1984 the respondent No.1 ought not have set aside the order dated 15.2.1990. The respondent No.1 also lost sight of the fact that in respect of the similarly situated persons also similar orders were passed, but the possession in the hands of those persons is not disturbed. It is pertinent that the said assertion of the petitioner is not disputed by respondents. In that view of the matter petitioner claims that it is only his case which is discriminated and the order in his favour has been set aside without justification. In the fact of the case which flow from the record, said claim of the petitioner cannot be said to be unjustified or cannot be brushed aside as baseless.

8. In the impugned order the respondent No.1 has recorded the decision of not granting request of respondent No.3 for withdrawing the application, however, he has failed to record reasons in

support of such refusal. In the order, the respondent No.1 has not addressed the issue as to why the said request of respondent – Panchayat did not deserve to be granted particularly when the respondent No.3 – Panchayat had passed resolution unanimously to abide by the order dated 15.2.1990 passed by the respondent No.2 – Collector and to let the petitioner enjoy the possession of the land in question as other similarly persons were enjoying and to withdraw the revision application. If at all the respondent No.1 was of the view that the request for withdrawing the application did not deserve to be granted, then, the respondent No.1 ought to have recorded reasons for refusing such a permission and afforded opportunity of hearing to the respondents to make submissions on the merits of the revision application of the respondent No.3 and ought to have given opportunity to the petitioner to oppose, on merits, the application. Unfortunately, the respondent No.1 failed on this count.

9. Mr. Hathi, Advocate, contended that the reasons recorded by the respondent No.1 while setting aside the order dated 15.2.1990 are not germane to the application preferred by respondent No.3 – Panchayat and they are in fact, extraneous vis-a-vis contentions raised by respondent No.3 – Panchayat in its revision application. In other words, Mr. Hathi, Advocate for petitioner, has contended that the reasons recorded by the respondent No.1 are beyond the scope of revision application. On perusal of the said order dated 2.7.1991, Mr. Hathi, Advocate, appears to be right and justified in advancing the said contention. The respondent No.1 has set aside the order of respondent No.2 on the grounds which were not urged by the respondent No.3 – Panchayat in its application.

10. It is pertinent that the respondent No.1 was not exercising suo-motu revisional power while considering the application No.11/1991 and he had suo-motu not taken up the order dated

15.2.1990 for examination but he was dealing with the application of the respondent No.3 and that applicant had desired to withdraw said application. In that view of the matter the respondent No.1 could not have taken up the scrutiny and examination of the order dated 15.2.1990 on any grounds other than those urged in the application of respondent No.3 and could not have set aside the said order on such other grounds, and that too in the application filed by respondent No.3.

11. Other two aspects involved in the matter are also relevant viz. (i) other similarly situated persons have been granted the land and now by virtue of the order of respondent No.1 only the petitioner is being denied the said benefit; and, (ii) the order dated 6.3.1984 passed by the Revenue Department, State of Gujarat, directing that the lease in favour of the persons, who have been granted the waste land, may be continued from time to time, is not withdrawn

and cancelled. The said two aspects are also disregarded by the respondent No.1 while passing the order impugned in the petition.

12. It is undoubtedly true that if by an illegality or irregularity other persons got certain benefits, the same cannot be perpetuated and on the basis of such illegality or irregularity the petitioner cannot justify its demand. Nonetheless it is equally true that before denying such benefit to the petitioner the concerned authority must arrive at a conclusion that the benefit granted to the others was on account of illegality or irregularity and such finding ought to be recorded after giving opportunity of hearing to the petitioner and without recording such findings, a person cannot be denied similar treatment. In present case, this aspect has not been addressed and petitioner has not been given opportunity to deal with objections. The things would have been different if the respondent No.1, after hearing the parties, had come to a conclusion

that the benefit granted to others was on account of illegality or irregularity and that such illegality or irregularity cannot be repeated or perpetuated by extending the same benefit to the petitioner. The respondent No.1 without arriving at such a conclusion has set aside the order dated 15.12.1990. This shows that the respondent No.1 has based his findings and decision on the issues not raised before him. This would also mean that the petitioner and/or the respondent No.3 did not get opportunity to deal with the issues considered by the respondent No.1. Further, the respondent No.1 was not exercising suo-motu revisional jurisdiction over the order dated 15.2.1990. Without arriving at a finding as to how the direction in communication dated 6.3.1984 was not relevant or applicable in the present case and why it did not deserve to be applied or followed in present case, the respondent No.1 could not have reached to the conclusion that the order dated 15.2.1990 was illegal.

13. The impugned order dated 2.7.1991 / 30.10.1991 is, for the aforesaid reasons, not tenable and deserves to be set aside. At the same time, the aforesaid issues are required to be considered by respondent No.1 before granting or refusing the application preferred by respondent No.3. Similarly, the contentions raised by respondent No.3 in its revision application are also required to be determined on merits. For all the aforesaid reasons, it is necessary to remand the matter for fresh consideration in accordance with law by respondent No.1. Under the circumstances, the case is remanded to the respondent No.1 with direction to decide the revision application of respondent No.3 – Panchayat afresh in accordance with law and after giving opportunity of hearing to the petitioner as well as respondent No.3 – Panchayat.

14. With the aforesaid directions, petition is partly allowed. Rule made absolute to the aforesaid extent. No order as to costs.

[K.M.Thaker, J.]

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